

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAN G. BARBOUR and
CATHERINE J. LUKE

Appeal No. 2005-1343
Application 08/588,637

MAILED

JUL 12 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ORDER REMANDING TO EXAMINER

The oral hearing scheduled for August 23, 2005 at 1:00 pm was vacated on June 22, 2005 for the following reasons:

This case was remanded by the Board on November 26, 2003 for the examiner to prepare a substantive response to each argument made by appellants in the Reply Brief received September 3, 2002, also taking into account Exhibits A-E. A Supplemental Examiner's Answer was authorized under 37 CFR §§ 1.192(c)(7) and (c)(8).

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On June 24, 2005, the examiner mailed a Supplemental Examiner's Answer. Appellants filed a paper entitled "Reply to Supplemental Examiner's Answer" on July 19, 2004. On April 19, 2005, the examiner mailed an action responding to the Reply Brief. It is unclear if the action mailed April 19, 2005 is an attempt to reopen prosecution, or a second Supplemental Examiner's Answer. If the action of April 19, 2005 is to reopen prosecution, the paper needs to explicitly state that prosecution is reopened. This paper fails to indicate that prosecution was reopened. However, if the paper filed April 19, 2005 is a second Supplemental Examiner's Answer, it is noted that the paper does not comply with 37 CFR § 41.43, in that a Technology Center Director or their designee must approve the Supplemental Examiner's Answer. For information on the new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

Accordingly, it is hereby

ORDERED that the application is remanded to the examiner to:

- (1) determine if the action mailed April 19, 2005 is reopening prosecution or a Supplemental Examiner's Answer;
- (2) If the paper mailed April 19, 2005 is an attempt to reopen prosecution, the paper must clearly state that prosecution is reopened and give appellants a time to respond;

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(3) If the paper mailed April 19, 2005 is a Supplemental Examiner's Answer, the Supplemental Examiner's Answer needs to:

- (a) meet the requirements of 37 CFR § 41.39 and
- (b) have the Technology Center Director's or their designee's approval;

and

(4) for such further action as appropriate.

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Dale M. Shaw
Program and Resource Administrator
(571) 272-9797

Frommer, Lawrence & Haug
745 Fifth Avenue
10th Floor
New York, NY 10151

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